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FISCAL IMPACT REPORT

SPONSOR Youngberg DATE TYPED 2/7/2005 HB 590

SHORT TITLE Prohibit Stopping Certain Domestic Well Use SB _____

ANALYST Aguilar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB-285, HB 500, SB 120, SB 451

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the State Engineer (OSE)

New Mexico Environment Department (NMED)

SUMMARY

Synopsis of Bill

House Bill 590 prevents the state engineer from stopping a person, firm or corporation from operating a well in accordance with a permit issued on or before July 1, 2005.

Significant Issues

The State Engineer notes the enactment of this bill may be contrary to the constitutional system of prior appropriation as it would effectively remove such wells from being administered in the same manner as all other water rights. The bill may also deny the constitutional right of "equal protection" to other persons who have non-domestic water rights and who are not exempt from priority administration.

Once a permit is issued the state engineer does not have the authority to stop well operation unless the conditions of approval are not met or if the state engineer is required to do so by valid regulatory requirements.

Domestic wells typically have a small impact on water levels but the combined use of many may reduce stream flows and impair existing senior water rights. Stream impacts will continue following discontinued well use but will decrease with time.

Many domestic wells may be in areas that could be easily served by an existing water supply system. Domestic wells are a concern because most will have an associated septic system and each domestic well may provide the potential for contamination of deep aquifers and community supply wells. There may be a circumstance in the future where domestic wells in certain localized areas should be plugged for public health concerns.

The State Engineer further explains the issue is far from clear-cut. It could be argued that HB 590 does not really exempt domestic wells from the prior appropriation system; it only limits the state engineer's statutory authority over them. Senior water rights owners would still have the right to sue to shutdown junior domestic owners in a private lawsuit, if the juniors were impairing the seniors' water rights.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB590 is related to HB500 and its companion bill Senate Bill 451 (SB451). HB590 is also related to Senate Bill 120 (SB120) and its companion House Bill 285 (HB285).

SB120 and HB285 allow the State Engineer to deny a domestic well permit if the well is located in a critical management area unless an applicant obtains an individual water right. If an individual water right is required, the applicant must obtain an existing water right from within the critical management area and change the place or purpose of use of the water.

HB500 and SB451 replace the ability of the State Engineer to deny a domestic well permit in a critical management area with the ability to limit the use of the domestic well to one-half acre-foot of water unless an applicant transfers existing water rights from within the critical management area to the new location, or the applicant discontinues the use of and caps an existing, permitted domestic well in that critical management area. HB500 and SB451 also contain language requiring the State Engineer to review a critical management area designation every 5 years to ascertain whether the critical management area continues to meet the criteria for designation.

OTHER SUBSTANTIVE ISSUES

Section 72-2-9 NMSA 1978 provides for the state engineer to supervise the apportionment of water according to the licenses he issues and the adjudications of the court.

The State Engineer notes New Mexico is a prior appropriation state, which means the water rights of junior appropriators ("second in time") may theoretically be curtailed to satisfy the rights of senior appropriators ("first in time"). (NM Constitution, Art. XVI, Sec. 2). Given the proper circumstances, the state engineer would be responsible for apportioning water according to priority, i.e., he may be required to shut down juniors to satisfy seniors under current law.

PA/njw